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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROWAN A. GRAHAM,

Plaintiff,

v.

**THE CITY OF NEW YORK, NYPD
Officer LISANDRO PENA (Tax ID
#952101) and NYPD Officer PAUL
PADILLA (Tax ID #952134).**

Defendants.

Amended Complaint

JURY TRIAL DEMANDED

13-CV-7109 (BMC)

PRELIMINARY STATEMENT

1. Plaintiff brings this civil rights action against the City of New York and New York City Police Officers Lisandro Pena and Paul Padilla, alleging that defendants violated his rights under 42 U.S.C. § 1983, the Fourth, Fifth and Fourteenth Amendments to the United States Constitution by falsely arresting him, and for the individually named officers' failure to intervene and prevent such conduct. Plaintiff seeks compensatory and punitive damages, attorney's fees and costs and such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§1983 and 1988, and the Fourth, Fifth & Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331 and §1343.

3. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §1391 (b) and (c) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District and because some or all of the defendants reside in this District.

DEMAND FOR A JURY TRIAL

4. Pursuant to Fed. R. Civ. P. 38, Plaintiff demands a trial by jury in this action.

PARTIES

5. Plaintiff Rowan A. Graham ("Plaintiff" or "Mr. Graham") is a gainfully employed African American man; and Plaintiff is a resident of Kings County in the City and State of New York.
6. The City of New York is a municipal corporation organized under the laws of the State of New York.
7. The individually named defendants are members of the New York City Police Department ("NYPD") who were so employed on October 11, 2013. The defendants were acting under color of state law and in their capacities as members of the NYPD at all relevant times. The individually named defendants are sued in their individual and official capacities.

STATEMENT OF FACTS

8. At approximately 10:30 PM on October 11, 2013, Plaintiff was lawfully present within the vicinity of 4411 Church Avenue, Brooklyn, NY.
9. At the time and place more specifically set forth in ¶8 above, Plaintiff was with a small group of others, preparing to go out for his friend's birthday.

10. All of a sudden, numerous NYPD agents, including the individually named NYPD officers, descended upon Plaintiff and the small group of friends he was lawfully assembled with.
11. Plaintiff was neither involved in any criminal activity, nor did he ever act in a manner to give officers any reasonable suspicion or probable cause to believe that a crime had been committed or was about to be committed by Plaintiff.
12. The NYPD agents that first descended upon Plaintiff and the small group of friends then radioed for “backup.”
13. Next, NYPD Officer Lisandro Pena informed Plaintiff that he was under arrest for possessing marijuana, which shocked Plaintiff, because he neither had any marijuana on his person, nor in public view, nor does he smoke marijuana.
14. At no time did any NYPD Officer find marijuana on Plaintiffs person.
15. At no time did any NYPD Officer observe Plaintiff with marijuana in public view.
16. At no time did any NYPD Officer observe Plaintiff smoking marijuana.
17. Plaintiff was then placed under arrest.
18. Plaintiff was eventually transported to the 67th Precinct, where he was subjected to a “pat down” search.
19. Plaintiff had no weapons, no contraband and no marijuana on his person.
20. Defendant NYPD Officer Pena subsequently falsely informed employees of the Kings County District Attorney’s Office that they found marijuana on Plaintiff’s person.
21. Defendant NYPD Officer Pena then signed a Criminal Court Complaint which commenced a criminal proceeding against Plaintiff herein.

22. After approximately six (6) hours at the Precinct, Plaintiff was transported to Brooklyn Central Booking.
23. Plaintiff spent about twenty (20) hours within the confines of Brooklyn Central Booking before appearing before a judge for arraignment.
24. At his arraignment on October 13, 2013, Docket No. 2013KN079366, and at approximately 12:30 AM, Plaintiff learned that the defendants had charged him with violating NY PL §§221.10 (01), Criminal Possession of Marijuana in the 5th Degree and 221.05, unlawful possession of marijuana.
25. At Plaintiff's arraignment, the matter was adjourned in contemplation of dismissal.
26. As a result of the foregoing, Plaintiff suffered an unlawful detention, loss of liberty, emotional distress, fear, anxiety, humiliation, degradation – all to his detriment.

FIRST CLAIM
Unlawful Stop and Search

27. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.
28. Defendant NYPD Officer Lisandro Pena violated the Fourth and Fourteenth Amendments because he stopped and searched Plaintiff without reasonable suspicion.
29. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages herein before alleged.
30. As a result of the foregoing, Plaintiff suffered an unlawful detention, loss of liberty, emotional distress, fear, anxiety, humiliation, embarrassment and degradation – all to his detriment.

SECOND CLAIM
False Arrest

31. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.
32. Defendant Lisandro Pena violated the Fourth and Fourteenth Amendments because they arrested Plaintiff without probable cause.
33. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM
Failure to Intervene

34. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.
35. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct; had an opportunity to prevent such conduct and had a duty to intervene and prevent such conduct- but consciously failed and refused to intervene.
36. Accordingly, NYPD Officer Paul Padilla, who failed to intervene violated the Fourth, Fifth and Fourteenth Amendments.
37. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

FOURTH CLAIM
§1983 FABRICATION OF EVIDENCE

38. Plaintiff repeats and realleges each and every allegation as if more fully set forth herein.

39. Defendant NYPD Officer Lisandro Pena created false evidence against Plaintiff and forwarded such false evidence to the Kings County District Attorney's Office.
40. In creating such false evidence, defendant NYPD Officer Lisandro Pena violated Plaintiff's constitutional right to a fair trial.
41. The aforesaid conduct by defendants violated Plaintiff's rights under 42 U.S.C. §1983 and the Fifth and Fourteenth Amendments to the United States Constitution.
42. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against defendants as follows:

- a. Compensatory damages against all defendants, jointly and severally;
- b. Punitive damages in an amount to be determined by a jury;
- c. Reasonable attorneys' fees and costs; and
- d. Such other relief as this Court shall deem just and proper.

Dated: February 4, 2014
New York, NY

s/Michael J. Redenburg
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